

AMENDED IN ASSEMBLY JULY 3, 2003  
AMENDED IN ASSEMBLY MAY 12, 2003  
AMENDED IN ASSEMBLY MAY 5, 2003  
AMENDED IN ASSEMBLY MAY 1, 2003  
AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 578**

**Introduced by Assembly Member Leno**

February 18, 2003

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An act to add Section 27362 to, to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of, and to repeal Sections 27279.4 and 27398 of, the Government Code, relating to county recorders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Leno. County recorders: electronic recording.

(1) Existing law generally specifies that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

This bill would enact the Electronic Recording Delivery System Act of 2003, to authorize a county recorder, upon approval by resolution of the board of supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for the

delivery and recording of digitized electronic records, *and in specified cases, digital electronic records*, affecting the right, title, or interest in real property, subject to specified conditions, including system certification, regulation, and oversight by the Attorney General. It would authorize the Attorney General to charge a fee directly to a vendor seeking approval of software and other services as part of an electronic recording delivery system. It would require an applicant seeking authorization to submit documents electronically to obtain approval of the county recorder.

~~This bill would specify that an applicant approved to submit documents electronically is liable for economic loss due to negligence, fraud, or breach of duty in relation to an electronic recording delivery system, as specified. It would authorize the Attorney General or a district attorney or city prosecutor to seek a civil penalty of up to \$50,000 for each violation of the provisions of the act enacted by the bill or its implementing regulations and to seek specified civil remedies.~~

~~This bill would, until January 1, 2011, authorize up to 12 specified counties, subject to approval by their respective boards of supervisors, to participate in an electronic recording pilot project for the delivery and recording of digital electronic records affecting the right, title, or interest in real property, subject to specified criteria. The~~

~~The Attorney General would be required to evaluate the *electronic recording delivery systems*, including pilot projects and report to both houses of the Legislature on or before June 30, 2007.~~

(2) Existing law authorizes the board of supervisors of any county to provide for specified fees for the filing and indexing of documents with the county recorder.

This bill would provide that a county establishing an electronic recording delivery system shall pay for the direct cost of regulation and oversight by the Attorney General and, to pay these costs, authorize the county to impose a fee of up to \$1 for each instrument recorded, impose a fee upon any vendor seeking approval of software and other services as part of an electronic recording delivery system, and impose a fee upon any person seeking approval as an authorized submitter of electronic records.

(3) Existing law requires the Attorney General to appoint an Electronic Recordation Task Force, consisting of specified representatives, to meet on a regular basis to address the technical, legal, security, and economic issues associated with electronic recordation, and recommendations on specified issues.

This bill would repeal this provision.

(4) *This bill would authorize specified counties, subject to approval of their respective boards of supervisors, to notify by mail the party or parties executing deeds, quitclaim deeds, and deeds of trust, to impose a fee for the cost of the notice, and to require, as a condition of recording, that the document contain specified information. It would require each county providing notification pursuant to these provisions to report to the Legislature on or before June 30, 2007, regarding the discovery of fraudulent deeds, quitclaim deeds, and deeds of trust as a result of the notices.*

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 27279.4 of the Government Code is  
2 repealed.

3 SEC. 2. Section 27362 is added to the Government Code, to  
4 read:

5 27362. (a) A county establishing an electronic recording  
6 delivery system under Article 6 (commencing with Section 27390)  
7 shall pay for the direct cost of regulation and oversight by the  
8 Attorney General.

9 (b) The Attorney General may charge a fee directly to a vendor  
10 seeking approval of software and other services as part of an  
11 electronic recording delivery system. *The fee shall not exceed the*  
12 *reasonable costs of approving software or other services for*  
13 *vendors.*

14 (c) In order to pay costs under this section, a county may do any  
15 of the following:

16 (1) Impose a fee of up to one dollar (\$1) for each instrument that  
17 is recorded by the county. This fee may, at the county's discretion,  
18 be limited to instruments that are recorded pursuant to the  
19 electronic recording delivery system.

20 (2) Impose a fee upon any vendor seeking approval of software  
21 and other services as part of an electronic recording delivery  
22 system.

(3) Impose a fee upon any person seeking approval as an authorized submitter.

~~(d) A fee assessed pursuant to this section may not exceed the reasonable costs of providing the services for which the fee is charged.~~

*(d) The total fees assessed by a county recorder pursuant to this section may not exceed the reasonable total costs of the electronic recording delivery system, the review and approval of vendors and authorized submitters, security testing as required by this article and the regulations of the Attorney General, and reimbursement to the Attorney General for regulation and oversight of the electronic recording delivery system.*

SEC. 3. Article 6 (commencing with Section 27390) is added to Chapter 6 of Division 2 of Title 3 of the Government Code, to read:

Article 6. Electronic Recording Delivery System Act of 2003

27390. (a) This article shall be known and may be cited as the Electronic Recording Delivery System Act of 2003.

(b) For purposes of this article, the following definitions shall apply:

(1) “~~Authorized staff~~” *representative*” means either of the following:

(A) Any employee, contractor, designee, or agent of an authorized submitter to an electronic recording delivery system.

(B) Any employee, contractor, designee, or agent of a county recorder who is entrusted with access to the electronic recording delivery system.

(2) “Authorized submitter” means any of the following entities that has ~~complied with~~ *qualified pursuant to* this article, including Sections 27391 and 27392, and including any regulations adopted pursuant to this article, and that has been approved by, and contracted with, a county recorder to electronically record documents:

(A) An entity, agency, branch, or instrumentality of local, state, or federal government.

~~(B) A licensed title insurance~~ *A title insurer or underwritten title company as defined in Section 12340.4 or 12340.5 of the Insurance Code.*

1 ~~(C) The Federal National Mortgage Association (Fannie Mae)~~  
2 ~~or the Federal Home Mortgage Association (Freddie Mac).~~

3 ~~(D) An institutional lender as defined in subdivision (j) of~~  
4 ~~Section 5003 of the Financial Code.~~

5 ~~(E) An escrow company subject to Chapter 2 (commencing~~  
6 ~~with Section 17200) of Division 6 of the Financial Code, if all of~~  
7 ~~the following apply:~~

8 ~~(i) It has been audited regularly and no audit within the last~~  
9 ~~three years indicates any irregularity or violation.~~

10 ~~(ii) It is a member in good standing of the Escrow Agents~~  
11 ~~Fidelity Corporation.~~

12 ~~(iii) It has a license in good standing from the Department of~~  
13 ~~Corporations.~~

14 ~~(F) Any additional submitter determined by a county recorder~~  
15 ~~to be eligible pursuant to Section 27391.~~

16 ~~(C) An institutional lender, as defined in subdivision (j) of~~  
17 ~~Section 50003 of the Financial Code.~~

18 (3) “Computer security auditor” means ~~accredited~~ computer  
19 security personnel, hired from either the public or private sector,  
20 to perform an independent audit or review of the electronic  
21 recording delivery system. The computer security auditor shall be  
22 independent of the county and shall not be the same contractor  
23 hired to establish or participate in that electronic recording  
24 ~~delivery system or in any other county’s electronic recording~~  
25 ~~delivery system.~~ *delivery system.*

26 (4) “Digital electronic record” means a record containing  
27 information that is created, generated, sent, communicated,  
28 received, or stored by electronic means, but not created in original  
29 paper form.

30 (5) “Digitized electronic record” means a scanned image of  
31 the original paper document.

32 (6) “Document” means an instrument or record that otherwise  
33 meets the requirements of this article and affects the right or title  
34 to, interest in, or possession of, real property.

35 (7) “Electronic” means relating to technology having  
36 electrical, digital, magnetic, wireless, optical, electromagnetic, or  
37 similar capabilities.

38 (8) “Electronic document” means a document that is created,  
39 generated, sent, communicated, or received by electronic means.

(9) “Electronic recording delivery system” means a system to deliver for recording, and for return to the party requesting recording, digitized electronic records *or, pursuant to paragraph (3) of subdivision (a) of Section 27392 or Section 27398, digital electronic records*, affecting the right, title, or interest in real property.

(10) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(11) “Security testing” means an independent computer security audit, including, but not limited to, the use of computer security auditors to attempt to penetrate an electronic recording delivery system for the purpose of testing the security of that system. Security testing, including penetration studies, shall be subject to regulation by the Attorney General.

(12) “Source code” means a program or set of programs readable and maintainable by humans, translated or interpreted into a form that the electronic recording delivery system can execute.

(13) “System certification” means issuance of a confirmation letter regarding a specific electronic recording delivery system by the Attorney General. The system certification shall include any agreements between the Attorney General as to the operation of the electronic recording delivery system, including, but not limited to, the frequency of computer security audits.

27391. Any applicant seeking authorization to submit documents under this article shall obtain approval of the county recorder. The county recorder shall have discretion to grant approval based upon the requirements of this article and regulations adopted pursuant to this article. *A county recorder may not be held civilly liable for denial of an application pursuant to this section.* The recorder shall be guided in the exercise of his or her discretion by the following factors:

(a) Whether accepting electronically delivered records from the person or entity is in the best interest of the county and the public.

(b) Whether the person or entity requesting access to the program for the purpose of electronically delivering documents has effective security precautions in place to safeguard against

1 potential fraud and forgery of documents during the electronic  
2 delivery process.

3 (c) ~~(1)~~ Whether the person or entity requesting access  
4 demonstrates the maintenance of sufficient financial ability to  
5 indemnify losses for which it is responsible that might be suffered  
6 by the county or members of the public.

7 ~~(2) The recorder may in his or her sole discretion consider or~~  
8 ~~require net worth, maintenance of insurance or bonding, access to~~  
9 ~~indemnity or fidelity funds, other evidences of financial ability, or~~  
10 ~~any combination thereof.~~

11 (d) Whether the volume and quality of electronic records  
12 submitted will be sufficient to warrant electronic delivery.

13 (e) Whether factors of cost, capacity, or security require the  
14 limitation of the provision of access to persons requesting to  
15 participate, based upon business reasons for recording documents,  
16 scope of authority under a license, if any, and volume of  
17 documents recorded in previous years.

18 (f) Whether the authorized submitter is legally authorized to  
19 conduct business in this state.

20 ~~(g) Whether a person applying under subparagraph (F) of~~  
21 ~~paragraph (2) of subdivision (b) of Section 27390 regularly~~  
22 ~~recorded documents in the county during the three-year period~~  
23 ~~prior to the date of application in sufficient numbers to~~  
24 ~~demonstrate a business need to record electronically. It is the intent~~  
25 ~~of the Legislature that county recorders consider approving~~  
26 ~~authorized submitters under this section after developing~~  
27 ~~experience in the operation of an electronic recording delivery~~  
28 ~~system, including protection of security.~~

29 27392. (a) *(1)* Upon approval by resolution of the board of  
30 supervisors and system certification by the Attorney General, a  
31 county recorder may establish, in accordance with this article, an  
32 electronic recording delivery system ~~for the delivery and~~  
33 ~~recording of digitized electronic records affecting the right, title,~~  
34 ~~or interest in real property.~~ system.

35 *(2)* *Except as specified in paragraph (3) and in Section 27398,*  
36 *an electronic recording delivery system shall be limited to the*  
37 *delivery for recording of documents that are digitized electronic*  
38 *records. Authorization for delivery of electronic documents under*  
39 *this article may only be granted to an authorized submitter that is*



1 *a title insurer or underwritten title company or an entity, agency,*  
2 *branch, or instrumentality of local, state, or federal government.*

3 *(3) An electronic recording delivery system may provide for the*  
4 *delivery for recording of a digitized or digital electronic record, or*  
5 *both, that is limited to an instrument of reconveyance, a*  
6 *substitutions of trustee, or an assignment of a deeds of trust.*  
7 *Authorization for delivery of electronic documents under this*  
8 *paragraph may be given to any authorized submitter.*

9 (b) Any system developed pursuant to this article shall provide  
10 for proper offsite archival procedures in accordance with  
11 guidelines developed pursuant to Section 12236.

12 (c) Any system developed pursuant to this article shall require  
13 a governing contractual relationship between the recorder and  
14 each authorized submitter that includes, but need not be limited to,  
15 the following components:

16 (1) A requirement that the submitter comply with this article  
17 and any implementing regulations.

18 (2) Provisions governing the identification and supervision of  
19 authorized staff.

20 (3) Mutually agreed upon standards of operation of the  
21 electronic recording delivery system.

22 (4) Permission by the *authorized* submitter for security testing.

23 (5) A provision specifying that the agreement may be  
24 terminated ~~at any time; pursuant to this article.~~

25 (6) *A requirement that all electronic documents originate and*  
26 *be submitted from a location within the United States.*

27 (7) *A requirement that the authorized submitter and its*  
28 *authorized representatives consent in writing to the jurisdiction of*  
29 *California courts as to any alleged civil cause of action related to*  
30 *the operation of any electronic recording delivery system. Nothing*  
31 *in this paragraph is intended to affect a contract to submit a*  
32 *dispute to arbitration.*

33 (d) Notwithstanding Section 27203, a recorder ~~may~~ *shall*  
34 refuse to enter an agreement with an authorized submitter, or ~~may~~  
35 *shall* refuse to accept an electronically delivered document from  
36 an authorized submitter whenever ~~any~~ *either* of the following  
37 occur:

38 ~~(1) The submitter or authorized staff has been convicted of a~~  
39 ~~felony or misdemeanor related to fraud or of a crime of moral~~  
40 ~~turpitude.~~



(1) *An authorized submitter or an authorized representative with secure access to an electronic recording delivery system has been convicted of a felony or convicted of a misdemeanor related to theft, fraud, or a crime of moral turpitude. This determination shall be made pursuant to Section 27395. A county recorder may continue to accept electronically delivered documents from an authorized submitter if the authorized submitter documents that it has terminated all access of the authorized representative to the electronic recording delivery system.*

(2) The recorder reasonably believes that the submitter or authorized staff has engaged in improper conduct relating to the recording of documents.

~~(3) The recorder reasonably believes that the submitter or authorized staff has violated any provision of the contractual agreement required by this article.~~

(e) The county recorder may terminate access to any electronic recording delivery system, or any part of a system, or may terminate access of any authorized submitter, or any authorized ~~staff representative~~, at any time he or she deems it necessary to protect the public interest, to protect the integrity of public records, to protect homeowners or real property owners from financial harm, or in the event an authorized submitter or its agents or employees violates any rules or regulations established by the county recorder for maintenance of the system *or any provision of the contractual agreement required by this article*. No cause of action or liability against the county recorder or any government agency shall arise from the decision of the county recorder to terminate or deny access of any person to the electronic recording delivery system, *pursuant to the requirements of this article*.

27393. (a) To be eligible to establish an electronic recording delivery system, a county or county recorder shall contract with, and obtain a report from, a computer security auditor selected from a list of computer security auditors approved by the Attorney General.

(b) The Attorney General shall approve computer security auditors on the basis of significant experience in the evaluation and analysis of Internet security design, the conduct of security testing procedures, and specific experience performing Internet penetration studies.

(c) The Attorney General shall complete the approval of security auditors within 90 days of a request from a county recorder. The list shall be a public record. The computer security auditor shall conduct ongoing monitoring of the electronic recording delivery system and issue periodic reports, with the frequency of monitoring and reporting to be determined by regulation. The reports of the computer security auditor shall include, but not be limited to, all of the following considerations:

(1) Safety and security of the proposed system, including the vulnerability of the electronic recordation system to fraud or penetration.

(2) Results of testing of the system's protections against fraud or intrusion, including security testing and penetration studies.

(3) Recommendations of any additional precautions or provisions needed to ensure that the proposed system is as secure and protects the integrity of the recorder's records.

(d) Upon completion, the reports and any response to any recommendations shall be transmitted to the board of supervisors, the county district attorney and the Attorney General. A county may not begin an electronic recording delivery system until security testing, as defined in paragraph (11) of subdivision (b) of Section 27390, has demonstrated that the system is secure and system certification has occurred. The Attorney General shall not approve any electronic recording delivery system, unless it fulfills the requirements of this article and the regulations of the Attorney General.

(e) An electronic recording delivery system shall be audited, at least once during the first year of operation and periodically thereafter, as set forth in regulation and in the system certification, by a computer security auditor. The nature and scope of the audit shall conform to this article and regulations adopted pursuant to this article. Audit reports shall be submitted to the Attorney General, the county district attorney, and the county recorder. In conducting the audit, the primary role of the computer security auditor shall be to protect the public interest and ensure that electronic recording delivery systems are reliable and secure.

(f) A computer security auditor shall have access to any aspect of an electronic recording delivery system, in any form requested. Auditor access shall include, but not be limited to, permission for a thorough examination of source code and the associated

1 approved escrow facility, and necessary authorization and  
2 assistance for a penetration study of that system.

3 (g) If the county recorder, a computer security auditor, a district  
4 attorney for a county participating in the electronic recording  
5 delivery system, or the Attorney General reasonably believes that  
6 an electronic recording delivery system is vulnerable to fraud or  
7 intrusion, the county recorder, the board of supervisors, the district  
8 attorney, and the Attorney General shall be immediately notified.  
9 The county recorder shall immediately take the necessary steps to  
10 guard against any compromise of the electronic recording delivery  
11 system, including, if necessary, the suspension of the electronic  
12 recording delivery system.

13 27394. (a) In lieu of the requirements set forth in Section  
14 27321, after acceptance for recording, the county recorder shall  
15 electronically transmit a copy of each recorded electronic  
16 document accepted under this article to the authorized submitter.  
17 The authorized submitter shall be responsible for mailing either by  
18 United States Postal Service or electronically a copy of the  
19 recorded electronic document to the address specified in the  
20 instructions for mailing upon completion of recording.

21 (b) When a signature is required to be accompanied by a  
22 notary's seal or stamp, that requirement is satisfied if the electronic  
23 signature of the notary contains all of the following:

24 (1) The name of the notary.

25 (2) The words "Notary Public."

26 (3) The name of the county where the bond and oath of office  
27 of the notary are filed.

28 (4) The sequential identification number assigned to the notary,  
29 if any.

30 (5) The sequential identification number assigned to the  
31 manufacturer or vendor of the notary's physical or electronic seal,  
32 if any.

33 (c) In addition to, and notwithstanding Section 27361.5, a  
34 county recorder, with approval by resolution of the board of  
35 supervisors, may require, but need not be limited to, the following  
36 index information on the first page or sheet of a digital or digitized  
37 electronic document presented for recording:

38 (1) The parcel identifier number of the real estate.

39 (2) The address of the real estate, to the extent available.

1 (3) The name of the authorized submitter presenting the  
2 document for recording.

3 (4) The name of the authorized requestor of a document for  
4 recording.

5 (5) The marital, corporate, partnership, or other similar legal  
6 status of a person who is a party to the document.

7 (6) The date of the document.

8 (7) The number of pages or sheets contained in the record,  
9 including the first page or sheet.

10 (8) The transmittal information to identify the sender and  
11 provide recording record information.

12 (9) If the document is a grant deed, quitclaim deed, or deed of  
13 trust, evidence that the grantor has given informed consent to the  
14 use of an electronic document.

15 27395. (a) (1) All individuals who are entrusted with access  
16 to the electronic recording delivery system as ~~authorized staff, or~~  
17 ~~a an authorized submitter, authorized representative, or computer~~  
18 security auditor, shall submit two 8" by 8" fingerprint cards  
19 bearing the legible rolled and flat impressions of their fingerprints  
20 together with a personal description, prepared by a local public law  
21 enforcement agency, which shall transmit the card to the Bureau  
22 of Criminal Identification and Information in the Department of  
23 Justice. Positions subject to this subdivision shall be determined  
24 by regulation and shall be set forth in a county's system  
25 certification.

26 (2) The Attorney General may utilize an alternate system of  
27 examining fingerprints if that system meets the same standard of  
28 reliability and security set forth in this subdivision and is approved  
29 and operated by the Department of Justice.

30 (3) The Department of Justice may forward one copy of the  
31 applicant's fingerprint cards to the Federal Bureau of Investigation  
32 for the purpose of obtaining any record of a previous out-of-state  
33 conviction of an applicant.

34 (b) The Department of Justice shall ascertain whether an  
35 ~~individual applicant authorized staff or an individual applicant~~  
36 *individual applicant who is an authorized submitter, an authorized*  
37 *representative, or a computer security auditor* has suffered a  
38 felony conviction or a misdemeanor conviction for theft, fraud, or  
39 *a crime of moral turpitude*, including whether the individual  
40 applicant has pending criminal ~~charges within the State of~~

California. No individual applicant classified as authorized staff or as a computer security auditor may be employed in the security status of having access to the electronic recording delivery system, if he or she has suffered a felony conviction or misdemeanor conviction for theft, fraud, or crimes of moral turpitude, nor may the applicant have pending criminal charges of felony violations or allegations of misdemeanor charges for theft, fraud, or crimes of moral turpitude, as detailed in the criminal history information that is reviewed by the Department of Justice. A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury for forfeiture of bail is deemed to be a conviction within the meaning of this article, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information charges.

(c) The Department of Justice shall charge a fee sufficient to cover the cost of processing the fingerprint submission and to cover the cost of the Department of Justice maintaining and storing all applicant records.

(d) (1) Once the Department of Justice has ascertained the criminal history information of an applicant, it shall forward a written notification of criminal convictions or pending criminal charges, or both, to the division of the Office of the Attorney General charged with oversight duties regarding this article.

(2) *The Attorney General shall request subsequent arrest notification service from the Department of Justice pursuant to Section 11105.2 of the Penal Code for all persons subject to a criminal records check pursuant to this section.*

(e) The Attorney General shall deliver written notification of an applicant's ineligibility for access to an electronic recording delivery system to an applicant, his or her known employer, whether it be a public or private employer, to the related authorized submitter, and to the county recorder of the jurisdiction where the applicant seeks access to an electronic recording delivery system.

~~27396. County recorders are encouraged to experiment with notices to property owners to help them become aware of possible fraudulent or erroneous recordings against their properties.~~

(f) *No person applying to be, or who has previously been approved as, an authorized submitter, an authorized*

1 *representative, or a computer security auditor may be employed in*  
2 *the security status of having access to an electronic recording*  
3 *delivery system, if he or she has suffered a felony conviction or*  
4 *misdemeanor conviction for theft, fraud, or a crime of moral*  
5 *turpitude or if he or she has pending criminal charges for any of*  
6 *these crimes, as detailed in the criminal history reviewed by the*  
7 *Department of Justice.*

8 (g) *A plea of guilty or no contest, a verdict resulting in a*  
9 *conviction, or the forfeiture of bail, shall be a conviction within the*  
10 *meaning of this article, irrespective of a subsequent order under*  
11 *the provisions of Section 1203.4 of the Penal Code, allowing the*  
12 *withdrawal of a plea of guilty or no contest, and the entry of a plea*  
13 *of not guilty, the setting aside of a verdict of guilty, or the dismissal*  
14 *of accusations, whether by indictment or information.*

15 27397. (a) The Attorney General shall, in consultation with  
16 the County Recorders Association of California and the California  
17 District Attorneys Association, adopt regulations establishing  
18 standards for *the review and approval of authorized submitters and*  
19 *authorized representatives and the review and approval by county*  
20 *recorders of systems and processes to conduct electronic recording*  
21 *and providing for the regulatory oversight of electronic recording*  
22 *delivery systems. Regulations shall be adopted pursuant to the*  
23 *Administrative Procedures Act, Chapter 3.5 (commencing with*  
24 *Section 11340) of Part 1 of Division 3.*

25 (b) No electronic recording delivery system may become  
26 operational without the approval of the Attorney General pursuant  
27 to applicable regulations adopted pursuant to this article.

28 (c) The regulations shall include general guidelines relating to  
29 security, capacity, reliability, and uniformity, and shall comply  
30 with Section 12168.7. The regulations shall establish minimum  
31 standards to ensure that a county recorder has the capability of  
32 identifying security problems that may make the system  
33 susceptible to fraud or any attempt to tamper with official records,  
34 and shall establish specific guidelines, including the approximate  
35 frequency of security testing, and standards for security and  
36 security testing.

37 (d) The regulations governing security shall require that each  
38 electronic recording delivery system comply with all requirements  
39 deemed by the Attorney General to be consistent with the public



1 interest in electronic recording delivery systems being as reliable  
2 and secure as possible.

3 (e) The regulations shall also contain all of the following:

4 (1) A statement of a uniform definition of the term “source  
5 code” consistent with this article and applicable to every  
6 electronic recording delivery system throughout the state.

7 (2) The placement of an exact copy of each source code  
8 associated with each approved electronic recording project in an  
9 approved escrow facility prior to that system’s first use.

10 (3) A requirement that any modification to a source code held  
11 in escrow that is associated with an approved electronic recording  
12 delivery system be approved by the Attorney General.

13 (4) An expression of standardized policies and procedures for  
14 the establishment and operation of approved escrow facilities.

15 (5) Establishment of baseline technological and procedural  
16 specifications for electronic recording delivery systems.

17 (f) Regulations may also provide for initial certification of  
18 vendors offering software and other services to counties for  
19 electronic recording delivery systems.

20 (g) The Attorney General shall monitor the security of  
21 electronic recording delivery systems statewide, in close  
22 cooperation with county recorders. In the event of an emergency  
23 involving multiple fraudulent transactions linked to one county’s  
24 use of an electronic recording delivery system, the Attorney  
25 General may order the suspension of electronic recording delivery  
26 systems in any county or in multiple counties, if necessary to  
27 protect the security of the system, for a period of up to seven  
28 calendar days.

29 (h) (1) The Attorney General or a district attorney may bring  
30 an action in the name of the people of the State of California  
31 seeking declaratory or injunctive relief, restitution, rescission,  
32 ~~disgorgement of profits~~, or other equitable relief pertaining to any  
33 alleged violation of this article or regulations adopted pursuant to  
34 this article.

35 (2) *The Attorney General, a district attorney, or a city*  
36 *prosecutor may seek a civil penalty of up to fifty thousand dollars*  
37 *(\$50,000) for each violation of this article or its implementing*  
38 *regulations. In assessing the amount of civil penalty, the court*  
39 *shall consider all relevant circumstances, including, but not*  
40 *limited to, the nature and seriousness of the misconduct, the*



1 *number of violations, the persistence of the misconduct, the length*  
2 *of time over which the misconduct occurred, the willfulness of the*  
3 *defendant's misconduct, and the defendant's ability to pay.*

4 (3) *Nothing in this subdivision shall be construed to prevent the*  
5 *Attorney General, a district attorney, or a city prosecutor from*  
6 *seeking legal or equitable relief under any other provision of law.*

7 (i) An electronic recording delivery system shall be subject to  
8 local inspection and review by the Attorney General. The Attorney  
9 General shall furnish a statement of any relevant findings  
10 associated with a local inspection to the county recorder of the  
11 inspected electronic recording delivery system, *the district*  
12 *attorney*, and to all technology vendors associated with that  
13 system.

14 ~~27397.5. (a) In addition to any other relief available pursuant~~  
15 ~~to this article, the Attorney General or a district attorney may seek~~  
16 ~~a civil penalty of up to fifty thousand dollars (\$50,000) for each~~  
17 ~~violation of this article or its implementing regulations.~~

18 ~~(b) In addition to any other civil liability provided under law,~~  
19 ~~all applicants approved by the recorder and authorized to submit~~  
20 ~~documents are liable for economic loss due to negligence, fraud,~~  
21 ~~or breach of fiduciary duty in relation to an electronic recording~~  
22 ~~delivery system or due to the failure to comply with this article,~~  
23 ~~with regulations adopted pursuant to this article, or with its~~  
24 ~~contract with the county recorder. Liability extends to acts or~~  
25 ~~omissions of authorized staff and any other agent or employee.~~  
26 ~~This liability shall lie notwithstanding any contrary waiver or~~  
27 ~~disclaimer in any title insurance policy, escrow instruction, or~~  
28 ~~other document pertaining to the real estate transaction associated~~  
29 ~~with the loss.~~

30 *27397.5. No right that a party may have to recover damages*  
31 *in relation to an electronic recording delivery system may be*  
32 *waived or disclaimed in any title insurance policy, escrow*  
33 *instruction, or other document pertaining to the real estate*  
34 *transaction.*

35 27398. (a) Subject to the approval of their respective boards  
36 of supervisors, ~~up to 12 counties~~ *the Counties of Alameda, El*  
37 *Dorado, Fresno, Los Angeles, Orange, Placer, Riverside, San*  
38 *Bernardino, San Mateo, Santa Clara, Tulare, and Ventura* may  
39 participate in an electronic recording pilot project for the delivery  
40 and recording of digital ~~electronic records affecting the right, title,~~

1 ~~or interest in real property.~~ *electronic records. Participation in a*  
2 *pilot project shall be limited to an authorized submitter that is a*  
3 *title insurer or underwritten title company, or an entity, agency,*  
4 *branch, or instrumentality of local, state, or federal government.*

5 (b) Except as set forth in this section, *all of the requirements*  
6 *contained in this article shall also apply to an electronic recording*  
7 *pilot project implemented under this section.*

8 (c) The Attorney General may enact any additional regulations  
9 necessary to ensure the security of a system based upon digital  
10 electronic records, including regulations related to the acceptance  
11 of a document containing an electronic signature or digital  
12 notarization.

13 ~~(d) The Attorney General shall conduct an evaluation of the~~  
14 ~~pilot projects and report to both houses of the Legislature on or~~  
15 ~~before June 30, 2007. The Legislature may, based on this~~  
16 ~~evaluation, consider whether the pilot project should be expanded~~  
17 ~~or extended, or limited or terminated.~~

18 ~~(e)–~~

19 (d) Subject to the requirements of this article, a pilot project  
20 established under subdivision (a) that is in lawful operation on  
21 June 30, 2007, may continue in operation until December 31,  
22 2010.

23 ~~(f)–~~

24 (e) This section shall remain in effect only until January 1,  
25 2011, and as of that date is repealed, unless a later enacted statute,  
26 that is enacted before January 1, 2011, deletes or extends that date.

27 27398.5. (a) *Subject to approval of their respective boards of*  
28 *supervisors, the Counties of Alameda, Contra Costa, El Dorado,*  
29 *Fresno, Orange, Placer, Riverside, San Bernardino, San Mateo,*  
30 *Santa Clara, Tulare, and Ventura may, within 30 days of*  
31 *recordation of a deed, quitclaim deed, or deed of trust, notify by*  
32 *mail the party or parties executing the document. The recorder*  
33 *may require, as a condition of recording, that a deed, quitclaim*  
34 *deed, or deed of trust indicate the assessor's identification number*  
35 *or numbers that fully contain all, or a portion of, the real property*  
36 *described in the legal description. If the description contains more*  
37 *than one assessor's parcel, all assessor's parcels shall be*  
38 *indicated. The form of the entry shall be substantially as follows:*

39 *Assessor's Identification Number \_\_\_\_-\_\_\_\_-\_\_\_\_.*

1     (b) *This section shall not apply to the recordation of any*  
2 *document where the federal government, or state, county, city, or*  
3 *any subdivision of the state acquires title.*

4     (c) *The failure of the county recorder to provide the notice as*  
5 *permitted by this section shall not result in any liability against the*  
6 *recorder or the county.*

7     (d) *In addition to any other recording fee, the recorder may*  
8 *collect a fee from the party filing a deed, quitclaim deed, or deed*  
9 *of trust, other than a government entity, pursuant to subdivision*  
10 *(a). The fee shall not exceed the cost of the notice, or four dollars*  
11 *(\$4), whichever is less.*

12     (e) *On or before June 30, 2007, each county providing*  
13 *notification pursuant to subdivision (a) shall report to the*  
14 *Legislature regarding the discovery of fraudulent deeds, quitclaim*  
15 *deeds, and deeds of trust as a result of the notices.*

16     27399. (a) ~~Nothing in this article shall be construed to~~  
17 ~~authorize any public agency to intrude upon the autonomy or~~  
18 ~~business practices of the county recorders of the State of California~~  
19 ~~in any manner not specifically set forth in this article.~~

20     ~~(b) If a district attorney or county counsel for a county~~  
21 ~~developing an electronic recording delivery system or the~~  
22 ~~Attorney General reasonably believes that a system operated~~  
23 ~~pursuant to this article has been compromised by fraud or~~  
24 ~~intrusion, he or she shall immediately take the necessary steps to~~  
25 ~~alert the county recorder to guard against any compromise of the~~  
26 ~~system that may result in the suspension of electronic recording.~~

27     27399.5. The authority granted in this article is in addition to  
28 any other authority or obligation under California or federal law.  
29 Nothing in this article shall be construed to repeal or affect Section  
30 27279, 27279.1, 27279.2, ~~or 27279.3.~~ 27279.3, 27297.6, or  
31 27387.1.

32     27399.7. *The Attorney General shall conduct an evaluation of*  
33 *electronic recording delivery systems authorized by this article,*  
34 *including the pilot projects authorized pursuant to Section 27398,*  
35 *and report to both houses of the Legislature on or before June 30,*  
36 *2007. The Legislature may, based on this evaluation, consider*  
37 *whether the pilot projects should be expanded or extended, or*  
38 *limited or terminated, and whether any amendments to this article*  
39 *are warranted.*

1 SEC. 4. This act is an urgency statute necessary for the  
2 immediate preservation of the public peace, health, or safety  
3 within the meaning of Article IV of the Constitution and shall go  
4 into immediate effect. The facts constituting the necessity are:

5 In order that county recorders may alleviate fiscal constraints by  
6 implementing electronic recording delivery systems at the earliest  
7 possible time, it is necessary for this act to take effect immediately.

